TAX CASES No.14 OF 1991

Reference against the statement of case drawn on 30.11.1990 by Income Tax Appellate Tribunal,Patna Bench, Patna in R.A.No.35 (Pat) of 1990.

Commissioner of Income Tax, Patna - Applicant

Versus

M/s Mithila Properties Publication & Contractor Enterprises P.Ltd. Muzaffarpur --- (Respondents)

For the Assessee : Mr. K.N. Jain
Senior advocate with
Dr. R. Usha

For the Revenue : Mr. Prakash Sahay

P R E S E N T

THE HON'BLE MR. JUSTICE CHANDRAMAULI KUMAR PRASAD
THE HON'BLE MR.JUSTICE JAYANANDAN SINGH

Prasad & Singh,JJ. On a reference being made by the Patna Bench of the Income Tax Tribunal, the following question has come up for our consideration.

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that income derived by the assessee by letting out godowns to Food Corporation of India on rent was assessable under the head 'Business' and not under the head 'Income from house property ?"

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We have heard Mr. Prakash Sahay for the applicant-Commissioner of Income Tax and Mr. K.N. Jain, Senior Advocate for the opposite party assessee.

A Division Bench of this Court had the occasion to consider this question in respect of the same assessee in the case of Commissioner of Income Tax Vs. M/s Mithila Properties Publication and Contractor Enter.(2008 (2)BBCJ 653) and held that the

rental income derived by the assessee does not come within the head "income from house property" but assessable under the head "income from business."

The reasoning assigned by this Court in the said case applies mutatis mutandis in this reference also.

Accordingly, the reference is answered in the same terms, in favour of the assessee but against the Revenue.

Let a copy of this opinion be transmitted to the Patna Bench of the Income Tax Tribunal.

(C.K.Prasad)

(J.N. Singh)

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Patna High Court,
Dated, the 14th of July, 2008.
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